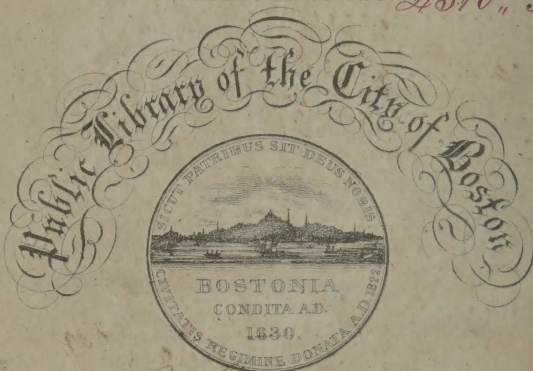




PRESENTED TO THE 4310^a 58.



By B. H. Dana, Jr. Esq.

Received Mar. 5, 1861. No. 23972

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S P E E C H

OF

RICHARD H. DANA, JR.,

AT MANCHESTER, N. H.

ON TUESDAY EVENING, FEBRUARY 19, 1861.

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MANCHESTER, N. H., Feb. 16, 1861.

RICHARD H. DANA, JR., ESQ.—Dear Sir: By the unanimous vote of the Republican Club of this city, we take pleasure in inviting you to address the Republicans of Manchester, Tuesday evening next, upon the questions now agitating our country, and the demands they make upon us as loyal citizens thereof.

FREDERICK SMYTH,
President of Republican Club.

A. B. SHATTUCK, *Secretary.*

The undersigned, Republicans of Manchester, having read with great satisfaction your speech delivered on Monday evening last to the Republicans of Cambridge, Mass., gladly join in the above request, and trust that you may find it convenient to accept the invitation of our city club:

Herman Foster, E. A. Straw, Moody Currier, Isaac W. Smith, Thomas Wheat, D. L. Stevens, S. D. Lord, Waterman Smith, Samuel Upton, David Cross, D. I. Daniels, I. B. Chase.

BOSTON, Feb. 18, 1861.

GENTLEMEN: As Congress, and the Legislatures of most of the States, and the Advisory Convention, are in session, from which we hear daily men who speak from the vantage-ground of public office; as events change rapidly the complexion of public affairs; and especially, as two weeks will bring us the inaugural address of the new President; I should not think, in my own judgment, that a speech by a private citizen could be of much value or interest.

I presented this view frankly to your Committee, when they called upon me. The response has been your letter of the 16th inst., largely signed, I am told, by men of chief influence and prominence in your city.

I cheerfully yield to this request, hoping that your call will shield me from the suspicion of having put forward a claim upon public attention.

I am gratefully, with high respect,

Yours truly,

RICHARD H. DANA, JR.

The Officers of the Republican Club, and Hon. Herman Foster, Hon. Moody Currier, and others.

S P E E C H .

MR. PRESIDENT, AND FELLOW-CITIZENS OF MANCHESTER :

The President-elect was entirely right when he said that there has been no crisis, but an artificial, a factitious crisis. The movement which has disturbed our peace, and periled the Government, and from which we are not yet wholly escaped, has not been a spontaneous movement of the Southern mind to resist threatened wrong, and to obtain security against apprehended danger. A large number of leading public men have acted in co-operation to effect a revolution, contemplating the exercise of military force in the last resort, if necessary. In other words, it has been a — conspiracy!

So far as resort to force is concerned, — so far as an attempt to coerce the General Government by intimidation is concerned, — we have perhaps escaped the peril, and may draw a long breath of relief. But the causes and many of the effects remain; and there is yet much for the people to think about, to determine upon, and upon which it is our duty, as well as it is our right, to make our determination known.

I cannot better perform the duty you have assigned me, than by attempting to examine into the past and present of this dark period, in the hope of getting the necessary light for our immediate action.

By the sweat of our brow, we are to eat our bread. Enjoyment of every kind is conditioned upon labor of some kind. By the sweat of our brow, we are to carry on this Republic. Popular self-government is conditioned on the intelligent labor of the great body of the people in public affairs. When that ceases, from whatever cause, the sun of the republican system declines to the horizon. Anarchy may not, and probably will not follow. Government of some sort, a living social system, is a necessity of divine ordination, in which great powers must be lodged somewhere, and exercised somehow. All republics but ours, whether in ancient or modern times, have been built upon an aristocratical basis. Upon the theory that the government which is best administered is best, and upon the fact that the few possessed the intelligence and the stake necessary to make able and responsible governors, the few did govern. This is somewhat the case in most of the Southern States of our Union, though not from an avowed aristocratical theory, but from the inevitable result of an exclusive slave-labor of a different race. But, in the Northern States, the tribunal of original jurisdiction and of final appeal is the great body of the people. It is true, the people never vote upon measures; we only

vote for men. But our votes for and against men, representing principles, and the various ways we have of influencing our appointed agents who vote on measures, lodge with us the responsibility for public affairs.

In times of peace and prosperity, we leave all to routine, and trust, in overweening confidence, to the working of machinery. These are often periods of our greatest danger. It is not without wise purpose that the Liturgy calls for divine deliverance, — “in all time of our prosperity.” We are now in the midst of events which remind us of our duty, and of the danger of neglecting it. Every man who does not do his best to understand these questions is unfaithful to his trust. Every man who is ignorant of them is a nullity. Every man who misunderstands them is a nuisance. If the farmer would not have his ploughshares beaten into swords; if the lawyer would not have his laws silent among arms; if the merchant would not carry to the account of loss the results of a disorganized and ineffectual government, — each must consent to give the best of his moral and mental strength, for a while, to his public duties. Edmund Burke tried to raise the torpid minds of the House of Lords to an unwonted elevation, by telling them that, in the trial of Warren Hastings, they were trying “the cause of Asia in the presence of Europe.” We, too, though without the pomp of heraldry, are trying a great cause, in a great presence, — the cause of a Continent, in the presence of the civilized world. For my small share in this cause, I should be ashamed of myself if I hesitated to give the hours of this evening to a conference, at this centre of political influence in a sister State, upon such an invitation as has been tendered to me by you.

I think you will find a sufficient definition of a Conservative, for practical purposes, to be this: A man who is able to form the same opinions before attaining to administration, which the responsibilities of administration will inevitably bring him to. This sort of conservatism I have always endeavored to attain unto. It has its drawbacks. It obliges a man to measure his words. It compels him to preserve some relations between the ends he aims at and his means, between his plan and the execution of it; and, above all, it compels him to deny himself that most exquisite of American luxuries, the luxury of unrestrained rhetoric. But it has its satisfactions; one of the greatest of which is that in times of exigency, a man is not put to the mortification of being obliged to recede from opinions and positions which he has himself held, and which he has encouraged others to hold. And I can truly say that I have seen nothing in the present aspect of public affairs, nothing in the events of the last few months, which has compelled me, as a single private person, to abate anything from the political principles which I have held the last twelve years.

We are often told, fellow-citizens, that the North can save the Union; and men from the South are constantly saying to us, “You from the North can save the Union from its danger.” The South

can do more than that. The South can prevent the danger. The Union is safe, if the South does nothing.

I have said that this has not been a spontaneous movement of the Southern people, but a factitious crisis, brought on by conspiring men. It is too soon, now, to fathom this attempt at revolution, and to state with precision its ends and means. But some things are of established knowledge.

Nearly thirty years ago, Gen. James Hamilton was crying to the people of South Carolina, "I know you will go to the death with me for my sugars." Gen. Jackson, in his letter to Mr. Crawford in 1833, said, "The tariff was only a pretext, and disunion and a Southern Confederacy the real object. The next pretext will be the negro or slavery question."

Mr. Madison, in his letter to Henry Clay in 1833, said, "It is painful to see the unceasing efforts to alarm the South by imputations against the North of unconstitutional designs on the subject of slavery. You are right, I have no doubt, in believing that no such intermeddling disposition exists in the body of our Northern brethren."

Mr. Calhoun's resolves of 1837 were described in the newspaper of Mr. Isaac Hill, of this State, as "the beginning of the agitation." Even Mr. Buchanan charged Mr. Calhoun with increasing the agitation, and making Washington its centre. Mr. Crittenden declared that "the course of irritation, agitation, and intimidation he [Mr. Calhoun] has chalked out, is the surest method of destroying the Union." Mr. Clay speaks of it as "increasing and exasperating the existing agitation." Of the same character and tendency have been the gag-laws, or rules respecting petitions, Mr. Calhoun's resolves of 1847, the continued annexations and attempts at further annexations South, the desire to extend slavery over all the territories, the attempt to force it upon Kansas, the repeal of the Missouri Compromise, and the attempts to obtain decisions from the Supreme Court, fastening Slavery on the Republic, both politically and territorially.

The effect of these measures has been to *change slavery from a State question and a moral question, into a national and political question, and to make slavery a legitimate and necessary matter of debate in Congress and before the people.*

Col. Benton's diary, for the last twenty years of his life, is an accumulation of overwhelming proof of the desire and design of the "Calhoun democracy" to dissolve the Union, or, at least, to coerce a reconstruction of it upon a southern, slaveholding basis. Such has been the belief of Madison, Jackson, Clay, and Benton. Such became gradually the avowal of Calhoun. His posthumous correspondence now establishes the fact, by his own confession, that his policy, from 1837 until his death, was, in his own words, to "shift the basis of Southern union," from the tariff to the slavery question, and to "force this issue on the North." And now the mask is thrown off by all, and the desire of thirty years' growth has borne fruit in overt treason.

The revolutionists may be divided into two classes : those whose object has been a Southern Confederacy, and those whose object has been a reconstruction of the Constitution on a slaveholding basis, with such free States as could be induced to acquiesce in the change. It is certain that South Carolina has been openly and boldly in the former class. It is not certain how far other States and their public men have been treating secession as an end, and how far as a means of coercion. But whether the one or the other, these men have co-operated. The States were to follow one another in rapid and precipitated acts of secession. Virginia was to stand sponsor and guardian for secession, to protect the seceding States from coercion, and in due time to come in herself. This was to have swept away Maryland. The District of Columbia having been ceded by Maryland, it was to be claimed that the secession of Maryland operated a retrocession of the seat of a government which was to be declared dissolved. The Capitol was to be taken possession of, the treaties and all the symbols of government seized, and the new dynasty proclaimed to be the United States of America, and then such terms offered as would bring in some, and neutralize others of the free States; and those that remained faithful to the present Constitution would be left out, and driven to the alternative of a military invasion of the Capitol, or acquiescence in the result. This was to have been pre-eminently the fate of New England. Twice before have plans been laid for dis severing New England from the rest of the country; once by the army of Burgoyne, and once by the treason of Arnold! A like disastrous defeat awaited them all.

It is hard to realize, to believe that such a conspiracy could have been planned, in our day, and so nearly executed; yet so, in all probability, must it be read in history. But a kind Providence had not written that our beloved Republic was to perish thus and now. Certain events, providentially ordered, and certain men, no less providentially raised up, have averted the catastrophe. The discovery of the immense money scheme of the Secretary of War, and the simple movement of an officer from one post to another in Charleston harbor, bore the same relation to this plot that the arrest of André did to the treason of Arnold. The darkest hour was that in which General Cass resigned, disheartened at the treachery and imbecility of the Government. The first hope dawned with the heroic patriotism of General Scott, — his “undying grip on the Constitution and the Union.” Not Lundy’s Lane, nor Chippewa, nor the pacifications of the Eastern and Western frontiers, nor the glories of Vera Cruz or Cherubusco, will so irradiate and so endear to all Americans, as will these last acts in the great drama of his life, the name of Winfield Scott!

The nation owes much to the patriotic firmness of Governor Hicks, of Maryland. In the Cabinet, it owes much to the untiring and energetic struggles of Holt and Stanton, and latterly, of General Dix. In Congress, we owe much to those true friends of the

Union, such as Governor Johnson, of Tennessee, Mr. Etheridge, of Tennessee, Mr. Clemens, of Virginia, and Henry Winter Davis, of Maryland. They declared themselves for the Union, at all events. Whatever the majority would do willingly, without coercion, to remove suspicions and fears, and to strengthen their hands, they would gladly accept. But not so they who traded with treason, and struck hands with rebellion, for the purpose of coercing the General Government into a substantial change of the Constitution:—Those States and those men who, like Virginia and most of the Southern Democrats in the Senate, took the attitude of threatened secession, claimed it as a right, offered protection to others in exercising it, and then announced the terms on which they would be satisfied to forego secession or revolution, and permit the Government to be carried on! Such was the position of Virginia and of Ex-President Tyler, such the position of Mr. Guthrie, of Kentucky, and I have yet to be taught that such has not been the position of Mr. Crittenden.

Had there been an Executive, this should have been a question between the Executive Department and the revolutionists; and there was, properly, nothing for Congress to do but to furnish means. But there was no Executive, at the most critical time. And, even after the changes in the Cabinet, any access of fear on the part of the President, or of misplaced confidence, would give all to the winds again. I believe we shall learn, in time, that Mr. Seward and Mr. Adams made their calm, conciliatory, well-poised speeches, firm against all concession, yet not defying the revolutionists, at a moment when they did not know that any hour the Government might not fall from under them; and because they knew there was no Executive with which it was safe to defy the revolutionists to their last resource.

The first inquiry is, upon what has this vast movement rested, and from what causes has it sprung?

The lever with which they have worked, has been Slavery. This is the strongest single interest in the country. Beside its alleged two thousand millions in value, it has the advantage of being purely sectional, and of being universal in the section in which it exists. The very dangers that attend it, make its guardians the more watchful, sensitive, and united. Another source of its power is that it comes home to the business and bosoms of every man, woman, and child in the South. It is their one staff, their daily bread,—a matter of hearthstones, presenting a dreadful alternative of prosperity and peace, or servile war; a mortal struggle for supremacy or for life. This power, too, has the advantage (for purposes of concerted action, I mean) of being wielded by a few. The whole number of voting slaveholders probably does not exceed one hundred thousand, and the few managers of this voting power are able to act with more secrecy than is possible in our part of the country. For such purposes, they have most of the advantages of an oligarchy,

Another source of influence is in the characteristics of the Southern people. Eighty years ago, Mr. Burke spoke of them thus:—

“There is another circumstance attending these [the Southern] Colonies which makes the spirit of liberty still more high and haughty than in those of the Northward. It is that in Virginia and the Carolinas they have a vast multitude of slaves. Where this is the case, in any part of the world, those who are free are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there, that freedom, as in countries where it is a common blessing, and as broad and general as the air, may be united with much abject toil, with great misery, with all the exterior of servitude, liberty looks, amongst them, like something that is more noble and liberal. I do not mean, sir, to commend the superior morality of this sentiment, which has at least as much of pride as virtue in it, but I cannot alter the nature of man. The fact is so; and these people of the Southern Colonies are more strongly, and with a higher and more stubborn spirit, attached to liberty than those to the Northward. Such were all the ancient Commonwealths; such were our gothic ancestors; such, in our days, are the Poles; and such will be all masters of slaves who are not slaves themselves.”

One or two hundred years of tropical life and slave institutions have not ameliorated this combination of haughtiness of domination over others, with jealousy of their own freedom. These traits have led to two results, in their influence on national politics, — the exercise of extreme powers of government when it has been in their possession, and the assertion of the right of nullification and secession as a defence against any apprehended attacks on their own privileges.

Another source of influence has been the fact that this political organization, based on slavery, has controlled the politics and wielded the patronage of the General Government for thirty years; and it is hard for a privileged class to part with its monopoly, and sink to the level of the rest of us, and take its chances of honors and power at the ballot-box. It does not require much art and effort to persuade them that acquiescence in the decision of the majority is a degrading submission, and the revolution of the wheel of fortune an attack on vested rights.

Mr. Buchanan says, in his message, that questions of the territories, and of the rendition of fugitive slaves, though sufficient for purposes of ordinary political action, were not enough to account for secession. That must be traced to fear and suspicions respecting slavery at home, — questions of forcible abolition or insurrection. This is true; and without this lever to work with, the movement could not have been promoted with such success. And the revolutionists have systematically worked upon the fears, interests, and passions of the South, on this point, with the most untiring and ingenious energy. But even here they could not have

succeeded alone. They have received great aid from the North. Since the resistance to the aggressions of slavery, political and territorial, has fallen to the charge of one party, the opponents of that party have acted with a unity of design on that head. Their object has been to defeat the Republican party, by preventing its getting any foothold, or even a hearing, at the South. The design has been to establish an impassable gulf between that party and the South,—a gulf which can neither be bridged over, nor sailed over, and over which not even a bird of peace shall fly. This result would not only lose that party every chance of a Southern vote, but, keeping it a sectional party, would diminish its influence at home, and even render it suspected and odious. This policy, like that of Cromwell in attempting to exterminate the Irish, was well enough, (except in a moral point of view), if it succeeded, but fraught with terrible dangers if it failed. If the Republican party came into power, rebellion became an imminent danger. I acquit the Northern journals that have been engaged in this work, of any intention to furnish sustenance to secession or revolution. They intended only a usual, but not defensible party warfare. But it is not possible for men to limit the effect of their wrong.

In this connection, I wish to say a word about the Abolitionists of the North.

THE ABOLITIONISTS OF THE NORTH.

No man can understand the politics of this country who does not understand the position of this class. Want of that knowledge misleads people in Europe and at the South. I refer to the members of that association identified with the names of Mr. Garrison and Mr. Phillips. I will not join in the cry of the pack which is setting upon them; for they are a minority, engaged in an unprofitable and unpopular cause, for which they have suffered much, and some of them, Mr. Phillips certainly, have made large sacrifices; and especially not now, when their adversaries have clothed them with the dignity of representing, in their own persons, the right of free speech on public questions.

The scheme of their doctrine is this: Slavery is of that class of sins known as *mala in se*, with which all voluntary connection is itself a sin. The Constitution of the United States recognizes slavery, and makes some compromises with it. A conscientious man ought not, therefore, to have any voluntary connection with the Constitution. True to this logic, and with a fidelity to their convictions we cannot but respect, *they seceded long ago*. They could not carry any State or county, or town with them, and therefore they are not protected by Virginia, and granted immunity by Mr. Buchanan. As they are peace men, non-resistants, they have not seized the forts, nor called the attention of the laws to themselves. But they seceded, on their own private account, as individuals. They resigned all offices, State and national; refuse to

take the oath of allegiance; never vote in any election, State or national, and belong to no party. They are open, avowed disunionists, and pray and preach for dissolution.

If the disunionists of the South had taken the same view of duty, there would have been less trouble. But they have taken the oath, voted, controlled parties, and held the highest offices, and, in fact, have been the Government, and only left the Cabinet and the Senate when they saw that their longer stay there was of less benefit to the cause of treason than their open secession.

These abolitionists at the North, of whom I speak, left to themselves, and of their own force, attract little attention, and have little influence. Their disconnection from politics, their secession attitude, their disunion purposes, render it so. I have known them from my college days, and I do not see but that they have the same orators, and much the same audiences, they had then. I do not see that they have added one convert of note to their ranks, or even kept pace with the increase of population. Their organ is the *Liberator*. Who sees the *Liberator*? Is it sold at our railroad stations, or in our steam cars, or horse cars, or at our steamboat landings, or depots for periodicals, or hawked in the streets? I see a good deal of what is going on in Boston, but, to the best of my recollection, I never saw that journal but once in my life, and then it was sent to me by mail from a Southern city.

I know this association claim that all the anti-slavery element in the political action of the country is attributable to their efforts. I believe this to be an entire mistake. They are simply that extreme left of a great body of moral opinion and feeling, which you will find on every subject, in every thinking community. They might as reasonably attribute the public interest felt in the late comet, to the articles that may have appeared upon it in the columns of the *Liberator*.

But this association has been a mine of wealth to the revolutionists of the South, and to the opponents of the Republican party in the North, who, by an intentional confounding of names and terms, have represented their speeches and resolves as the speeches and resolves of men engaged in political action, of Republicans, and have been the very wings on which their words have been borne all over the South, creating false impressions as to the purposes and principles of the Republicans and the North, alarming fears, arousing passions, and furnishing a complete magazine of weapons and ammunition for the promoters of disunion. And at this moment, it is in the power of a few Northern journals that you and I could name, if they would sink their party purposes and make a clean breast of the truth, to do more than any men in the country to restore confidence and peace.

But we Republicans, and all men of the North, whether of our party or not, have duties to perform relating to this great question. We cannot tell what a day may bring forth. Our representatives may at any moment be called upon to act, and desire to know our

opinions; and we ourselves, sooner or later, must meet all these issues. Allow me, therefore, to call your attention to them in their order.

SLAVERY WITHIN THE STATES.

It is a fundamental principle of our government that all the domestic relations are matters of State control. The right of the slave States to the exclusive control of slavery within their borders, rests on a broader and deeper basis than any special provision of the Constitution. It is bound up, indissolubly, with all the domestic relations of every State,—with those of husband and wife, parent and child, master and servant, master and apprentice, and all the laws regulating labor, education, internal police, and the tenure and descent of property. This is such a truism in our policy, that it need not have been placed in the platform of any party, were it not for the wilful misrepresentations of opponents, and the honest fears and suspicions of the South, engendered in the way I have attempted to describe. These fears and suspicions it is our duty to meet and minister to, in the kindest spirit, line upon line, and precept upon precept, by speech, by resolves of party conventions and Legislatures, by explanatory and declaratory acts, and, if they desire it, even by an amendment of the Constitution securing this principle, which we are all interested in maintaining, even more firmly than it now is, although we all believe such an amendment to be pure supererogation.

SLAVE REPRESENTATION IN CONGRESS.

As dear to the lovers of free institutions as is the equality of representation, yet our ancestors, who had periled life and fortune for that principle, made the compromise, believing it necessary to ensure the Union, that five slaves should be counted as three free men in the ratio for representation. Then there were few slaves, and few slave States, and it was hoped and believed that in most of them slavery would die out or be gradually abolished. But, from unforeseen causes, slavery has advanced at a fearful pace. The slave States became increased three-fold; and the slaves are now more numerous than the entire population of the Union then was,—free and slave, black and white, together. The slaves give to the freemen of the South nearly as many representatives as all New England is entitled to. Yet the North has acquiesced in the extension of this anomaly and privilege to all the new States, without objection, and almost without a murmur. And if we intend to preserve the Union, we must expect to acquiesce in it.

SERVILE INSURRECTIONS.

By the Constitution, the General Government is obliged to protect each State, on the application of the State, from domestic violence. It is to aid, if required, in putting down insurrections against the law of State, whether that law be slavery or any other

law, and whether the insurrection be of whites or blacks, of free men or of slaves. The right to require this aid in case of slaves, is not because it is slavery, but because slavery is the local law; and this right is bound up indissolubly with the right of every State to require the aid, in all cases of invasion or domestic violence.

On this point, there are honest fears among the Southern people. Although these fears have been cruelly played upon, for political effect, by the revolutionists at the South, and the opponents of the Republicans at the North, yet they do exist, and must be respected. It is, indeed, a strange thing here, among the granite hills of New Hampshire, to speak of our Government, precluded by the Declaration of Independence, as interfering to put down an insurrection for freedom. But unless we except slavery from all other State laws, and refuse to recognize it as a *de facto* law of a State within the limits of the State, we cannot do otherwise. And if we do make that distinction, we dissolve the Union by our own act.

But there are considerations it is our duty to reflect upon and give weight to. What is an insurrection of slaves? Not a question between freedom and money, as is the case of a fugitive. It is a war of the races. When that war begins, slavery ends, or is suspended. It is a struggle for supremacy, by the ordeal, not of regulated warfare, but of massacre, of epidemic violence, and the horrors of a general uprising of millions of ignorant, exasperated men, subject to no law and no control. If they are defeated, as they would be, their condition is not improved. If they could be successful, the superior, enlightened white race would be exterminated or banished, — reduced to slavery it cannot be, — and those vast regions given up to such a condition as four millions of unenlightened and scarcely civilized negroes would bring it to. Such a conflict no man ought to provoke. Such a catastrophe all men may well join to avert. In such a conflict, for myself I may say that not only my technical duty under the Constitution, but my sympathies, would be with my own race.

If any legislation is necessary to prevent the instigation of such violence by men in the free States, I think it should be granted; not abridging freedom of speech and the press, or infringing on State rights. And, on the whole subject, especially since the affair of John Brown, there is a duty of explicit speech on the part of the North.

THE RENDITION OF FUGITIVE SLAVES.

Our ancestors of New England, who have taught the world the great lessons of freedom, did yet make this compromise with local slavery: the fugitives were to be restored, — not, to be sure, as property, as things, for that claim they would not recognize, but as persons owing service and labor by the law of a State. On that point, the Constitution, to my mind, admits of no other

honest construction. The fugitive from service is to be returned, although that service be some form of slavery.

Let no man attempt to exaggerate the horror that may attend the rendition of the fugitive. I know the law cannot discriminate between the good master and the brute, the old and ignorant and repulsive slave, and the intelligent and the beautiful. I know that the slavery to which the fugitive is returned is, by the common law of slavery, the absolute power of the master over the body of his slave, subject only to such restraint or responsibility as, by express enactment, the controlling race has chosen to prescribe in the State, or may choose to prescribe hereafter. I believe that a Union with slave States could not now be formed, for the first time, as an experiment, on that concession. It would be rejected. But it is not now a question of adopting or rejecting. It is a question of perseverance in the Union, or its destruction; a question between the conservation of a political system, and the experiment of revolution. Our ancestors made the compact, and if the Union can be preserved, we succeed to it. This concession cannot be justified on grounds of pecuniary or other material advantages to the North. It must stand on large moral considerations, or it ought not to stand. If we could erase it, and preserve the Union, we ought to do so, at any cost. If we can commute for it, we should do so, at any price. If not, then, as moral beings, we must judge of the Union as a whole, as of every human work and every human being. If as a whole it is beneficent and useful, we are to sustain it; and if as a whole it is not, then we may break it to pieces. We must look at the Constitution as we would look at a beautiful statue. If there is a defect which we can strike off, we should do it. But if the defect be in grain, and cannot be removed without the destruction of the whole, then, whether we shall keep the statue or break it to pieces, must depend upon our judgment of it as a whole. The Union is the preserver of the peace of a Continent. It will, under our auspices, subdue the Continent to free labor, and civilize it by free institutions. It is beneficent for the world, beneficent for the white race, and not less beneficent, perhaps more so than disunion, for the blacks, even with the rendition of fugitives and the suppression of insurrections. This reasoning satisfied the men the world delights to honor, and may satisfy us.

But, if the South desires to effectuate the rendition clause, they must propose such laws as can be enforced. The present law cannot be and ought not to be effectuated. With proper laws, requiring diligence, establishing limitations of time, allowing commutation, providing guaranties against abuse, the right can be enforced as well as can be reasonably expected of a right of that character: as well as we can enforce extreme and odious rights of our own among ourselves. They must not expect any man to give them voluntary aid, to betray a fugitive, or to aid in his capture. They must be content with a perfunctory, official performance of a pain-

ful duty by official persons only. The magistrates will do their duty, and the juries theirs. The executive officials will perform theirs, as they perform the duties of the scaffold and the cell, with averted eyes, perhaps with tears. Mobs will be put down, and forcible rescuers punished. Every alleged fugitive will have the best of counsel, gratuitously, and, if need be, at the expense of the State; and I hope my own State will never repeal that humane provision; but I trust, for the credit of the Bar, the provision will be unnecessary.

I have done, now, with everything that concerns our relations with slavery, as a State institution.

THE TERRITORIES.

When the Constitution was adopted, the territories were all consecrated to freedom. Acquisition of territories was not contemplated, nor deemed constitutional. But they have been acquired, to a vast extent, all on the side of the South, changing the entire character of the government and the balance of power. The slave power has advanced from refusing to extend slavery as matter of conscience, to claiming the right to extend it as matter of conscience. Until lately, the North has not held its own on this question. Every department of the Government has been against freedom in the territories, and all its policy. Now, the tide is turned. Of the existing territories, Slavery has probably got all it will ever get. The popular vote has declared for their freedom, and the issue of the Kansas struggle is probably decisive; so long, certainly, as we can keep an administration that shall be active on the side of freedom.

But, at this moment, the defeated party is seeking to obtain, under the threat of secession, what no victory could have given them,—a change in the Constitution, establishing slavery south of $36^{\circ} 30'$ in all present and future territories. Mr. Crittenden's original proposition was to that effect, and the amendment was only to put its meaning beyond dispute, and was accepted by him as merely declaratory. It provides that all territory hereafter acquired by the United States shall be subject to slavery by law, whatever the people of the territory may wish, whatever Congress may wish, whatever the nation from which we obtain it may wish. And not only so, but Congress is to turn itself into a slave-making power, and build up slave codes for the territories, which it has never done to this hour; and also, when one of these slave territories has enough population for one member of Congress, it has a right to be a State. It changes the Republic of North America from a non-slaveholding Republic to a slaveholding Republic.

A plausible suggestion has been put forward, that we may accept the Crittenden proposal, and guard against it, by providing that no territory shall be acquired, except by a vote of two-thirds of the States or Senate. But the war power carries with it, of necessity, the power to seize and hold territory. Great imperial

necessities will override or evade this mere paper security. In accepting it, you let it admit a certain danger, and provide an uncertain safeguard; you take a sure poison and an untried antidote.

It is too far into the night for me to argue these propositions now. It is enough to say that we cannot accept any propositions which grant new powers to slavery, whether from Mr. Crittenden or Mr. Guthrie, or from whomever else, for two reasons. *First* — They are offered as the terms on which they will forbear revolution, and the people may be permitted to carry on the government. *Second* — They grant new rights and powers to slavery.

As these proposals will take new forms daily, I ask leave to suggest a few plain propositions, with which to meet them all.

First. We will concede no new right, power, or recognition to slavery, whether political or territorial, whatever may be the consequences of refusal.

Second. We will not bargain for the right to carry on the government, whatever may be the terms of the purchase.

Third. Any measures not justly liable to either of these objections, but addressed to those fears and suspicions which do exist at the South and are the sustenance of the revolution, it is our duty to offer.

Fourth. Our recognized duties to slavery under the present Constitution must be faithfully performed.

We will not bargain for the right to carry on the government, because it is a right that cannot be bought and sold. It perishes in the transfer. We will not bargain for it, because the terms they demand are the surrender of some great rights of freedom which are not ours to give, but which we hold in trust for a vast people now living, and hereafter to live. We will not bargain for it, because it will leave us no government if we pay the price. It will leave only a Constitution, which will be a government, indeed, when wielded against us, but only a voluntary league, when sought to be wielded in our favor.

We will grant no new right, power, or recognition to slavery, whether political or territorial. Are not the concessions of the present Constitution quite as much as the moral sense of the North can sustain? — quite as many as can be executed? If we make more, we shall be voluntarily and wilfully sinners against right and duty, and with the additional ignominy of doing it either from fear or from the mercenary motive of an undue love of material prosperity. But even that would be a delusion. We are at a time when we may say, without irreverence or a tempting of Providence, that duty is ours, the results are — elsewhere. We know that the course of honor is always the course of ultimate good policy. We hope it will also be the course of immediate safety and peace.

We will do all we can do for conciliation, and to remove fears and suspicions. Above all, we may and must avoid an unre-

strained speech. Mere denunciation of slavery, where not necessary for the subject in debate, and for practical purposes of legislation, is not to be defended in such a confederacy as ours, made with slave States, recognized as such. We must remember that our brethren at the South have a fearful problem to deal with, demanding our sympathy and forbearance; and I believe they may rely upon receiving them, if they do not attempt to press slavery upon the nation, territorially or politically. I have never been willing, when abroad, to accept a compliment at the expense of my country, and of truth, as one entirely disconnected from slavery. No man who acts under our Constitution, whether as a voter or an officer, in State or national affairs, has a right to that position. We are, to a limited and defined extent, and in a qualified manner, it is true, yet we are complicated with slavery. Our government is to put down insurrections and return fugitives, and to allow a slave basis of representation, and to recognize and enforce slave laws within the slave States. We ought, manfully, though with regret, and with full admission of the evil and the wrong, to accept our share of the responsibility and the reproach. But we ought the rather, and may, with the more right and title, refuse all further compromises and concessions, and take our share of the responsibility of refusal. I expect to take the share that falls to me.

Gentlemen, citizens of New Hampshire, you are soon to have an election, and this I understand is the first of a series of meetings to prepare for the contest,—we may hopefully say, the victory. Let the trumpet that calls from the hills the first note after the inauguration of our President, give no uncertain sound! May you sustain, by a cheering approval, your Senators and Representatives who have deserved so well at your hands! When Democracy meant Republicanism, you were its Gibraltar at the North. Now that Republicanism is the name for Republicanism, be its Gibraltar still!

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ENEMY'S TERRITORY

AND

ALIEN ENEMIES.

WHAT THE SUPREME COURT DECIDED
IN THE PRIZE CAUSES.

BY R. H. DANA, JR.

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ENEMY'S TERRITORY AND ALIEN ENEMIES.

WHAT THE SUPREME COURT DECIDED IN THE PRIZE CAUSES.

MR. WILLIAM BEACH LAWRENCE has written a letter to a foreign journal ("The Law Magazine," London, November, 1863), in which he says of the decision of the Supreme Court of the United States, in the prize causes last winter, — "What was somewhat at variance with the views of those who had heretofore denied the right of secession, it recognized the war as made by the States in their political capacities, and, as a corollary therefrom, declared all the inhabitants of the seceded States, on account of their residence and without regard to their individual locality, alien enemies."

My purpose is to show that this is not a correct statement of the decision. It is now reported in 2 Black's Reports, and it will be found that the Court made no such recognition, followed no such corollary, announced no such declaration, and arrived at no such result.

This misconception of the decision has not been confined to Mr. Lawrence and the advocates of a State right of secession. Prominent men, advocating far different doctrines, seem to have looked at the decision in the same light. It has been vouched in to aid various theories; but all under the impression that it decides that the political relation of the inhabitants of the insurgent States to the General Government is that of alien enemies, and that the territory covered by those States is, in law, no more than enemy's territory. It has, therefore, seemed to me not a superfluous task, on an

issue so vital and pressing, to endeavor to explain the prize decisions, on that point, to persons who may not have studied the principles upon which they rest. And I make the attempt with the more confidence because, as the opinion of the Court supposes in its readers a knowledge of the phraseology and principles of the laws of war, an endeavor to give it a popular explanation is not supererogatory. Neither is it unnatural that the general reader should be misled by the terms used, and by the form of the reasoning, for prize law has its technical terms, and the end to which some of the reasoning is addressed is not apparent without a knowledge of the whole ground. I do not purpose to go further than the Court, and discuss the ultimate question, — what is the relation of those States, as bodies politic, or of their inhabitants, to the General Government, or to offer any opinion of my own in aid of a solution of that question. I confine myself to the humbler, but I think important task, of offering a popular explanation of the decision of the Court.

The Supreme Court decided that the established rule of international war respecting "enemy's property" is applicable to such an internal contest as that in which we are now engaged. This was the extent of the decision on that point: and in this the Court was unanimous.

What is the rule of international war respecting "enemy's property"? It is sufficient for the present purpose to state it thus: If a person is domiciled in enemy's territory, his property, found on the high seas, is subject to capture. It is immaterial what may be the civil or political *status* of that person, as regards the government of the capturing power. He may be an alien enemy. He may be a neutral — perhaps a consul of a neutral power. He may be a loyal citizen of the capturing power, with an involuntary domicile in the enemy's territory. When the Court condemns his property, it is because of the situation or predicament of the property, and not because of the moral *animus* or political *status* of its owner. It is called "enemy's property;" but that is a technical phrase of prize law. It does not imply anything as to

the legal, political *status* of the owner. One of the earliest condemnations of "enemy's property" in the war of 1812, was of the property of an American citizen, who happened to be domiciled in Liverpool, for commercial purposes, when the war broke out and the capture was made. (*The Venus*, 8 Cranch, 253.) A student of international law can easily suppose cases where the property even of the President himself, in that war, might have been condemned by us as "enemy's property."

It may be useful, in this connection, to refer to the reasons upon which this rule rests, as aiding to a better understanding of the rule itself. The reasons are, that property, in certain situations, is so placed that the hostile power, whom the war is intended to coerce, has an interest in its existence, transit, or arrival, and the capturing power a corresponding interest to deprive the enemy of that advantage. In this conflict of interests, the consent of nations authorizes the strongest to take the property, if it is found at sea. One of the facts which puts property in this predicament is that the owner of it is himself domiciled in the enemy's territory, and therefore he and his property are subject to the unlimited power of the enemy, to his taxation, his exactions, his confiscations, forced contributions, and use of all kinds, with or without compensation. As the power of the enemy over the property of the inhabitants of his territory does not depend on their political *status*, and may even be increased by their being hostile to him, so neither does the right of the belligerent to intercept and take such property depend on those considerations. It is at the discretion of the political power to forego the condemnation, if the owner is known to be a loyal subject, having an involuntary domicile with the enemy, or to condemn the property and remunerate the owner after the war is over, or to make no remuneration. As a judicial question, the Prize Court can only decide that the property is lawful prize.

The Supreme Court applied this rule to our present war. They held that the property of a person domiciled in enemy's

territory was subject to capture, as a question of law, it being a political question whether that right of capture should be enforced. It was immaterial, in domestic war as in foreign war, whether the owner, so domiciled, be a rebel citizen or a loyal citizen, a foreigner aiding the rebellion voluntarily or involuntarily or not aiding it at all, or a loyal citizen having an involuntary domicile there. The Court decided absolutely nothing as to the legal or political *status* of the owner in relation to our own government. To guard against a mistake which might arise from the use of the term "enemy's property," the Court expressly says that "enemy's property" is "a technical term peculiar to Prize Courts." And again, "Whether property be liable to capture as 'enemy's property,' does not in any manner depend on the personal allegiance of the owner. It is of no consequence whether it belongs to an ally or a citizen." (Prize Cases, 2 Black, 674.) As Chief Justice Marshall said, it is "a hostile character impressed on the property," from its predicament or situation, that gives it that name. And as Judge Story said, of property of a citizen found engaged in trade with the enemy, "it is the illegal traffic that stamps it as 'enemy's property.'"

It is further necessary to inquire how the Court treated the question of "enemy's territory," residence of the owner in which renders the property at sea liable to capture. Here, again, the Court simply applied to our contest the admitted rule of international law. What is that rule? It is sufficient for the present purpose to say that a certain kind and degree of possession by the enemy, and the exercise of a *de facto* jurisdiction over a region, renders it, for the purposes of war and of the prize law, "enemy's territory." Whether a place is, in the meaning of the prize law, "enemy's territory," is a question of fact. It is not concluded by treaties, statutes, ordinances, or any paper-title. War is an appeal to force, and force settles the question of enemy's territory for the time. In the war of 1812-14, the peninsula of Castine became enemy's territory, within the meaning of the laws of

war. If a vessel belonging to a person domiciled and actually residing there, at that time, had been taken by one of our cruisers, bound in to that port, our Prize Courts would have condemned it as lawful prize, without deciding or inquiring whether the owner was a British subject, an American citizen, or a neutral. *The doctrine of PRIZE OF WAR does not rest on the basis of a penalty on the owner for his personal hostility, actual or implied. It rests on the basis of the right of one belligerent power to coerce another belligerent power by taking from its control or possibility of use, property and materials of certain descriptions and found in certain predicaments.* FORFEITURES and CONFISCATIONS belong to a distinct branch of law,—to the internal, municipal rules of each country, to its penal or criminal code. We are treating only of the rights and powers of WAR, to which alone the doctrines of Prize belong. When the British withdrew their occupation of Castine the owner of this property condemned as “enemy’s property,” if a citizen of the United States, would have resumed all his rights and duties as such, and no act of the people of Castine, or of the National Government, or of the State Government, would be necessary to establish his *status* as a citizen, or the *status* of Castine as part of the State and Nation.

Now, all that the Supreme Court did in respect to the proposition of “enemy’s territory,” was to apply the rules of international war to our contest, so far as the law of prize was concerned. The owners of the vessels and their cargoes had their domicile and actual residence in Richmond, Virginia, and Richmond was, at the time of the capture and adjudication, so far in the possession, and under such control and *de facto* jurisdiction of enemies of the United States, as to render it, at that time, within the meaning of prize law, “enemy’s territory.”

That result was not owing to State lines, secession ordinances, or any other conventional acts of States or people. It was a question of *de facto* forcible occupation. Richmond would have been pronounced “enemy’s territory,” and this

property condemned as "enemy's property," equally as well, if Virginia had never passed an ordinance of secession. And conversely, if Richmond had been regained into our possession, it would not have been decreed "enemy's territory," with all its secession ordinance, nor could this property have been decreed "enemy's property." When a prize court, sitting under the laws of war, decides that a certain region is enemy's territory, for the purposes of prize law, it does not necessarily predicate anything, affirmatively or negatively, as to the civil or political relations of that region or of its inhabitants with the enemy's government, or with its own.

To guard against a possible mistake arising from the use of the phrase "enemy's territory," Judge Grier strikingly says, "it has a boundary marked by lines of bayonets, and which can be crossed only by force. South of this line is enemy's territory, because it is claimed and held in possession by an organized, hostile and belligerent power." The reason why it is enemy's territory for the time being, and for purposes of prize, is not its ordinances of secession, or any legislation, valid or invalid, of the States, or any legal effects of rebellion on the region or its inhabitants, — but "*because it is claimed and held by an organized, hostile, and belligerent power.*" It is immaterial whether that organized, hostile, belligerent power has used the State machinery or not; whether it claims to be the several States, or a new body politic; whether it is composed solely of citizens, or solely of invading aliens, or of both. It is enough that it is such an organized force as to raise its acts to the dignity of war, and that the proper political department of our government has treated it as war, and applied to it the rights and powers of maritime capture.

The boundary of enemy's territory is, then, a varying line, depending on *de facto* condition, and not on the enemy's legislation, valid or invalid. What kind and degree of possession is necessary to constitute a region "enemy's territory," for the purposes of the law of prize, the Court did not think necessary to decide, for the possession the enemy had of

Richmond was sufficient to satisfy any possible definition. (If the reader desires to investigate the question of the kind and degree of possession by the enemy which will make a region "enemy's territory" for the time being, he will find nearly all the law on the subject in the case of *The Gerasimo*, in 11 Moore's Pr. Council Reports.)

The case which presented the naked question of enemy's property was *The Amy Warwick*. This was first adjudicated by Judge Sprague; and in his opinion, he sets forth the doctrine and its reasons, and says that the judgment does not "go beyond the fact of permanent residence," and takes pains to preclude any inference that the decision affects the existing or future political relations of the territory or its inhabitants with the General Government or the State. (*The Amy Warwick*, 24 Law Reporter, 335, 494.)

At the argument of the prize causes on appeal, the counsel for the United States adopted a line of argument intended to satisfy the Court that such were the reasons on which rested the rules of war touching enemy's property, that those rules could be applied to an internal war without the necessity of predicating anything as to the political relations of the owners or of the place of their residence towards the General Government.¹

It was wittily said, by a distinguished member of Congress, that the Supreme Court had decided that two of their number were alien enemies. I refer to this *bon mot* as a good illustration of an incorrect understanding of the decision. If Mr. Justice Wayne had continued to reside in Savannah, and Savannah continued to be under the control of the enemy, a vessel belonging to Judge Wayne would have been good prize, if the Government chose to treat it as such. But the fact that his property had been so condemned would have no legal effect on his political *status* under our Govern-

¹ I regret not to find among the arguments for the Government in these causes, in 2 Black's Reports, the admirable argument of Mr. Evarts. His absence from the country on public duty probably prevented his preparing a synopsis for the reporter.

ment, or on the political *status* of Georgia or its inhabitants.

In closing, I offer the following synopsis of what I understand the Court did and did not decide.

What the Court did not decide: —

1. The Court did not decide that the passing of the ordinances of secession made the territory of the insurgent States enemy's territory, or its inhabitants alien enemies.

2. The Court did not decide that the passing of the secession ordinances terminated, or in any way affected, the legal relations of the insurgent States, as bodies politic, with the General Government, or the political relations of their inhabitants with the General Government or with their respective States.

3. The Court decided absolutely nothing as to the effect of the passing of the secession ordinances on the civil or political relations of the inhabitants of the insurgent States with the General Government or with their respective States, or on the relations of the insurgent States, as bodies politic, with the General Government.

4. The Court did not decide that the inhabitants of the seceding States are alien enemies at all, or that the territory of those States is enemy's territory.

What the Court did decide: —

1. That in case of domestic war, the Government of the United States may, at its option, use the powers and rights known to the international laws of war as blockade and capture of enemy's property at sea.

2. That to determine whether property found at sea is "enemy's property," within the meaning of the law of prize, the same tests may be applied in domestic as in international wars.

3. One of those tests is that the owner of the property so found has his domicile and residence in a place of which the enemy has a certain kind and degree of possession.

4. Richmond, Virginia, was, at the time of the capture and condemnation of those vessels, under such possession

and control of an organized, hostile, belligerent power, as to render it indisputably "enemy's territory," within the strictest definitions known to the laws of war.

5. That it was immaterial how that organized power came into existence, whether by the use of State machinery or otherwise, or what its political claims or assumptions are, or whether it is composed of rebel citizens, or invading aliens, or both, or whether it professes to recognize State lines. It is enough for the Court that it is waging war, and so recognized by the political department of the General Government, and has the requisite possession of the region in which the owner of the property resides.

6. That a Court of Prize, in such case, decides independently of all questions as to the political relations of the owner, or of the place of his domicile, with the Government of the capturing power.



